THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION No. 33239 of 1997

Date: 06-06-2006

Between:

Gaddam Ramana Reddy

..... PETITIONER

AND

The Commissioner of Prohibition and Excise,
Hyderabad and two others.

....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION No. 33239 of 1997

O R D E R:

This writ petition is filed seeking a declaration that the order of confiscation dated 15-11-1996 passed by the second respondent-Deputy Commissioner of Prohibition, Karimnagar Division as confirmed by the first respondent-Commissioner of Prohibition and Excise vide order dated
26-08-1997 is arbitrary and illegal.

The petitioner claims to be the owner of a vehicle (Motor Cycle) bearing No.AP 15 B–7390. The said vehicle was seized by the Station House Officer, Raikal Police Station on the ground that the petitioner was found to have carrying 24 full bottles of Haywards Old Tavern Whisky on the vehicle in question in a bag. A case was registered for the offence under Section 34(a) of the Andhra Pradesh Excise Act, 1968 (for short 'the Act') for illegal transportation of the Indian Made Liquor. That apart, proceedings were also initiated for confiscation of the vehicle under Section 46 of the Act. The second respondent, having issued a show cause notice calling upon the petitioner to show cause as to why the vehicle in question should not be confiscated and having considered the explanation offered by the petitioner, by order dated
15-11-1996, confiscated the vehicle in question along with 24 bottles of Indian Made Liquor in exercise of powers conferred

under Section 46(2) of the Act. The findings recorded by the second respondent in the said order are as under:

1. *The fact that 24 bottles were under transportation goes to show that the vehicle is involved in organized smuggling of I.M.L.*
2. *The owner himself is the accused in the case and therefore, it is evident that the offence has taken lace with the active connivance and knowledge of the driver.*
3. *The argument of the owner of the vehicle/accused that his vehicle is falsely implicated in excise case by the police for the purpose of statistics cannot be believed as the proceedings were conducted in the presence of witnesses and the seized property was physically produced before the Dy. Commissioner of Prohibition and Excise, Karimnagar.*

Aggrieved by the same, the petitioner preferred an appeal before the first respondent, however, the same was dismissed by order dated 26-08-1997. Questioning the said order, the petitioner filed this writ petition contending *inter alia* that since he was acquitted in C.C.No.1065 of 1996 on the file of the Court of the Judicial Magistrate of First Class, Jagtial, by order dated 17-10-1997, the order of confiscation is unsustainable.

I have heard the learned counsel for both the parties and perused the material on record.

At the outset, it is to be noted that the petitioner was acquitted in C.C.No.1065 of 1996 on the ground that the prosecution failed to appear before the Court and failed to produce any material to prove the guilt of the accused beyond all reasonable doubt.

Section 46-D of the Act makes it clear that the order of confiscation passed under Section 46(2) of the Act, shall not prevent from initiation of criminal proceedings against the accused and the result of the criminal proceedings either acquittal or conviction or otherwise under the provisions of the Act will have no bearing on the order of confiscation passed under the Act. That

apart, admittedly the vehicle was confiscated on 15-11-1996 and the same was confirmed on appeal on 26-08-1997 whereas the criminal proceedings ended in acquittal much thereafter on 17-11-1997.

In the circumstances, by virtue of Section 46-D, the mere acquittal in the criminal proceedings cannot be taken as a ground to declare the order of confiscation as illegal.

Coming to the merits of the case, it is to be noted that the second respondent having considered the explanation offered by the petitioner, recorded a finding of fact that the offence had taken place with active connivance and knowledge of the petitioner and the same was confirmed in appeal. I do not find any justifiable reason to interfere such concurrent finding of fact.

Though the learned counsel for the petitioner contended that the order of the appellate authority was cryptic and being a non-speaking order is liable to be set aside, I am unable to agree.

Since the second respondent has considered all the relevant aspects and passed a well considered order, the mere fact that the appellate authority did not assign fresh reasons while confirming the order of confiscation is of no consequence and does not vitiate the proceedings.

In the circumstances, I am unable to hold that the impugned orders suffer from any infirmity warranting interference in exercise of jurisdiction under Article 226 of the Constitution of India.

Accordingly, the writ petition is dismissed. No costs.

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G.ROHINI, J

Dated:06-06-2006
KLP